

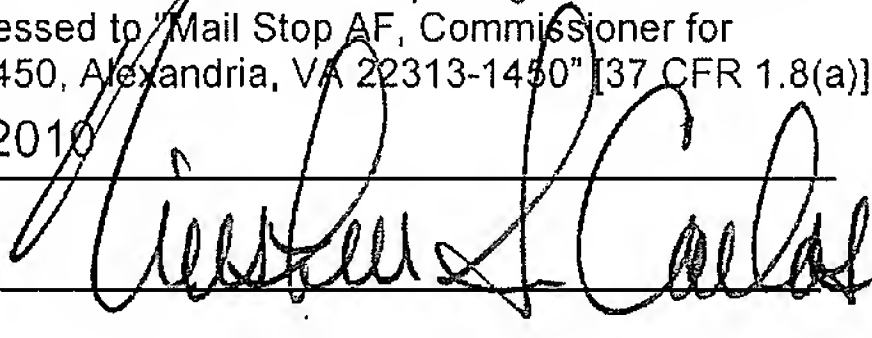
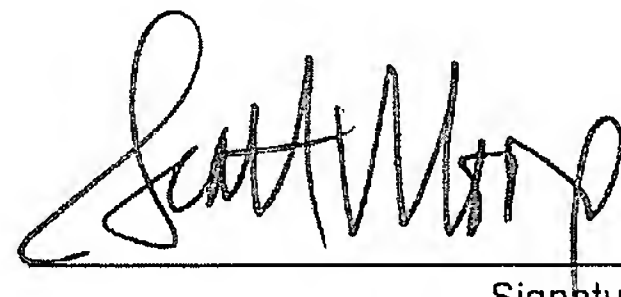
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 9400-62 (030408)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>February 5, 2010</u> Signature <u></u> Typed or printed name <u>Kirsten S. Carlos</u>	Application Number 10/756,790	Filed 1/13/2004	
	First Named Inventor Thomas Arnold Anschutz		
	Art Unit 2457	Examiner Uzma Alam	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>42,011</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p> Signature <u>D. Scott Moore</u> Typed or printed name <u>919/854-1400</u> Telephone number <u>February 5, 2010</u> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Thomas Arnold Anschutz, et al.

Confirmation No.: 2954

Application No.: 10/756,790

Group Art Unit: 2457

Filed: January 13, 2004

Examiner: Uzma Alam

For: *Methods, Systems, and Computer Program Products for Modifying Bandwidth and/or Quality of Service for a User Session in a Network*

Date: February 5, 2010

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which have been extended indefinitely

No fee or extension of time is believed due for this request beyond those that may otherwise be provided for in documents accompanying this paper. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed August 5, 2009 (hereinafter "Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Applicants respectfully submit that the rejections of the currently pending claims are clearly erroneous because many of the recitations of the pending claims are not met by the cited references for at least the reasons discussed herein and in Applicants' Response filed May 18, 2009. Therefore, Applicants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and

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without waiving the right to argue additional grounds should this Petition be denied, Applicants will only discuss the recitations of independent Claims 1, 19, 37 and 55.

Claims 1 - 55 are Patentable

Independent Claims 1, 19, 37, and 55 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Patent No. 7,046,680 to McDysan et al. (hereinafter "McDysan"). (Final Action, page 2). Independent Claim 1 recites:

A method of modifying at least one of bandwidth and Quality of Service (QoS) for a user session in a network that comprises a Regional/Access Network (RAN) that facilitates differentiated end-to-end data transport between at least one of a Network Service Provider (NSP) and an Application Service Provider (ASP) and a Customer Premises Network (CPN) that includes Customer Premises Equipment (CPE), comprising:
 receiving a request at at least one of the NSP and the ASP to change at least one of bandwidth and QoS associated with the user's session; and
 using Application Programming Interface (API) calls at at least one of the NSP and the ASP to communicate with the RAN to modify the at least one of bandwidth and QoS associated with the user's session.

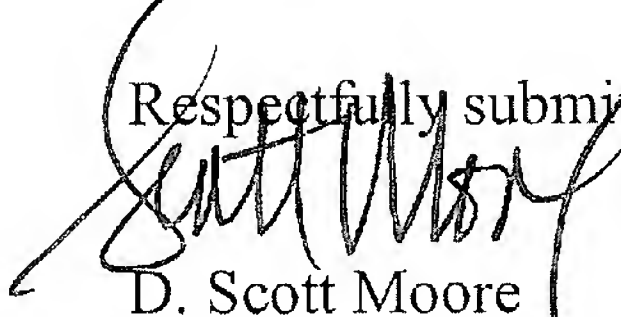
Claims 19, 37, and 55 include similar recitations. According to the independent claims, a request is received at the NSP and/or the ASP to change the bandwidth and/or the QoS associated with an existing user session. The Final Action alleges that the programmable access device 40 shown in FIG. 2 of McDysan corresponds to the NSP/ASP and cites col. 16, lines 59 – 64 along with Fig. 6 of McDysan as disclosing the request for changing bandwidth and/or QoS associated with an existing user session. (Final Action, page 2). In sharp contrast to the recitations of independent Claims 1, 19, 37, and 55, however, the cited passage from McDysan explains that the Resource Reservation Protocol (RSVP) can be used, "[f]or example, ...to request a path of specified bandwidth at a particular time." (McDysan, col. 16, lines 65 – 66). Thus, McDysan does not teach or suggest receiving a request for a change in bandwidth and/or QoS for an existing user session, but instead teaches that a customer application may use RSVP to request a new network path with a particular bandwidth.

In response to this analysis, the Final Action alleges that McDysan teaches that the

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programmable access device 40 can be used to extend and modify existing services and dynamically allocate resources such as bandwidth. The Final Action further alleges that customers can interact with the programmable access device to dynamically provision services. (Final Action, pages 8 and 9). The Final Action, however, alleges that the programmable access device 40 corresponds to the NSP and/or ASP recited in the independent claims. (Final Action, page 2). The independent claims do not recite that the NSP and/or ASP is the entity that actually modifies the bandwidth and/or QoS associated with the user's session, but instead states that the API calls are used on the NSP and/or ASP communicate with the RAN to modify the bandwidth/QoS associated. The Final Action does not appear to allege and McDysan does not appear to disclose using API calls on the programmable access device 40 to communicate with the RAN to modify bandwidth and/or QoS associated with the user's session.

Accordingly, for at least the foregoing reasons, Applicants respectfully request that the present application be reviewed and that the rejection of independent Claims 1, 19, 37, and 55 be reversed by the appeal conference prior to the filing of an appeal brief.

Respectfully submitted,

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CERTIFICATION OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on February 5, 2010.


Kirsten S. Carlos